

An Overview of the Legal Terms Heard in Child Welfare Work

Section 2



Parens patriae is the state's authority to protect people, including children

Some legal terms you will hear in
child welfare work

Parens Patriae

who cannot protect themselves.

This term comes from English law
and refers to the King being the
father of the country and having the
right to protect his children, or
citizens.

It is a concept that has continued into U.S. law and is the legal concept that
allows the state to act as parent and intervene on behalf of children in unsafe
situations.

Family autonomy is the legal concept that parents have the right to rear their
children with minimal interference
from the state. In other words,
parents have the right to raise their
children as they see fit. Many
Supreme Court decisions clarify
the concept of family autonomy.

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Family Autonomy

There are four tiers of evidence that are used in the court process. You hear

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Probable Cause

these terms used in child welfare
work as you interface with the court
and legal partners.

First is probable cause. To
have probable cause means to have a
reasonable belief that a crime has

been committed. This is the lowest level of legal evidence and is the standard used
for obtaining a warrant.

In the CPS Practice Guidelines you read, “reasonable basis to conclude that
abuse, neglect or dependency occurred.” This is also another way of describing
probable cause.

Second is the preponderance
of the evidence. To prove
something by the preponderance of
the evidence is to prove that it is
more likely true than not true. It is
determined by considering all of the

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Preponderance of the evidence

evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved. The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

This is the level of evidence used in Administrative hearings. This means the Administrative Hearing Judge looks for which argument is the most likely. This decision is based on your written documents and the witnesses you subpoena. Hearsay evidence is admissible; however, your case cannot be based entirely on hearsay evidence. Witnesses or documentation of the hearsay evidence is better. For example, if you supported a domestic violence related child abuse case based on a law enforcement report, you would want to have a copy of the report, and subpoena the law enforcement officer as a witness.

The next tier of evidence is clear and convincing evidence. Clear and

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Clear and convincing evidence

convincing evidence means the tier of facts must be persuaded by the evidence that it is highly probable that the claim or affirmative defense is true.

The clear and convincing evidence standard is a heavier burden than the preponderance of the evidence standard. This is the tier of evidence necessary to terminate parental rights except when ICWA applies.

Beyond a reasonable doubt is the level of certainty a juror must have to find a defendant guilty of a crime. A real doubt is based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case.

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Beyond a reasonable doubt

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. This is the level of evidence needed to terminate parental rights when ICWA applies.

Forma Pauperis is Latin for 'in the form of a pauper.' In Utah, we use the

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Forma Pauperis

Or in Utah

Indigent

term 'Indigent.' This legal term refers to someone who is without the funds to pursue the normal costs of a lawsuit or criminal defense. Upon the court's granting of this status, the person is entitled to a waiver of

normal costs and/or appointment of legal counsel. Indigent refers to a petition filed by a poor person in order to proceed in court without having to pay court costs, such as filing fees.

Another term that you may hear in Utah, that has the same meaning, is 'Impecuniosity'. It means the condition of being extremely poor.

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Exigent circumstances

Exigent circumstances, a term very familiar to CPS workers, means emergency conditions. In the removal of a child it means that the delay required to obtain a warrant is likely to result in substantial harm to

the child. Therefore, exigent circumstances exist to remove the child immediately and pursue the legal steps after removal.

Prima Facie Evidence is evidence which, if unexplained or uncontradicted, is sufficient to sustain judgment in favor of the issue which it supports, but which may be contradicted by other evidence.

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prima facie evidence

For example, under Utah law, if a parent has actual notice that their

child was abused by another person, and the parent then allows the child to be in the physical presence of the abuser, that is prima facia evidence that the child is at substantial risk of being abused.

Congratulations, you have now finished the second section of this training.

Before moving on, complete the matching questions below. Match the term in the left column to the matching definition in the right hand column with a line.

Match the legal terms to the correct response

Family Autonomy	Facts adequate to prove or support the cause of action
Forma Pauperis	Evidential Tier for TPR when ICWA applies
Prima facie evidence	Evidential Tier used in Administrative Hearings
Preponderance of the evidence	The state as the parent
Parens Patriae	Parents have the right to rear their children
Probable Cause	An emergency that requires immediate action
Clear and convincing evidence	Evidential Tier used in TPRs when ICWA does not apply
Exigent circumstances	Evidence needed to obtain a warrant
Beyond a reasonable doubt	Indigent

Check back through your materials to make sure that you have answered the questions correctly. You will take the complete quiz at the end of Section 5.

You are now ready to move onto Section 3 of the training. You can do this by returning to the training page and selecting Section 3 – The 4th and 14th Amendments of the U.S. Constitution: Impact of Constitutional Amendments on Child Welfare Work.